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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/603,531
Filing Date: June 25, 2003
Appellant(s): JERG, HELMUT

Russell W. Warnock
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 19, 2007 appealing from the Office action mailed December 8, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. However, arguments directed to dependent claim 19 were persuasive, rejection of claim 19 has been withdrawn, and presently only claims 8 and 14 are rejected over U.S.C. 103 over Alabaster.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,122,148 ***ALABASTER*** *2-1964*

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alabaster patent 3,122,148. Regarding each of claims 8 and 14, Alabaster discloses filter body or bag of mesh material 9 (column 3, lines 46-49 and figures 2 and 6), the porosity of such filter mesh material defining a plurality of filter openings, a plurality of such openings in an upper throat part of the mesh material 9, being covered or screened (by baffle elements 12 or a baffle element 24) adjacent the outer surface of such mesh material, adjacent to the mesh material which is opposite from inlet of throat 10 and in the open mouth of the filter bag, (see column 4, lines 24-36 and figures 4 and 6). The baffle elements may change state (orientation and spacing from the filter mesh openings) by being thermally responsive (column 4, lines 10-12) or specifically by flexing in response to heating of the liquid fluid medium flowing through the filter openings and being filtered (column 4, line 25 and 31-35). The baffle element(s) "covers" or "screens" plural openings of the filter material in the sense of being closely adjacent to and alternately abutting/flexing against the filter material, also the baffle element "screens" the filter

material & openings by facilitating screening of foam and soil contained therein (column 4, lines 4-23).

However, Alabaster does not disclose plural baffle elements 24 or 12 that change state or flex in response to changes in temperature or heating. Alabaster does however also disclose a plurality of screening baffles 12 covering openings of the filter body 9 to minimize over-spilling or filter by-passing (column 4, lines 4-12 and figure 5). It would have been obvious to one of ordinary skill in the art to have modified the Alabaster device by combining features of the two embodiments, hence by having plural rather than a single element 24 or 12 that changes state or flexes in response to changes in temperature, in order to more completely minimize over-spilling or filter by-passing. It is reasoned that since there are a plurality of baffles 12 in different orientations along the length/extent of the filtering element, Alabaster suggests the obviousness of also including a plurality of the baffles 12 or 24, that change state/flex along the length of the filtering element or in opposite or different sides of the filter mesh bag. Also, duplication of parts has no patentable significance unless a new and unexpected result is produced. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Further regarding Claim 14, Alabaster also discloses the filter utilized to filter water used in a dishwater appliance (column 1, lines 10-22, and column 5, claim 1). The openings in the mesh of the filter material 9, in combination with proximate baffle elements 12 and/or 14 in the line of flow of fluid, define openings which vary in effective cross-sectional area depending upon state or positions of elements 12 or 14, responsive to a temperature or degree of heat characteristic of the liquid medium flowing there-through . These defined filter openings filter

soil particles (column 3, lines 9-13, as well as foam material and soil contained in the foam (column 3, line 74-column 4, line 24).

Additionally, since the filter openings are defined as mesh material and in the form of a filter bag or pouch, the bag and filter openings thereof, itself, would inherently flex to some extent and thus expand to some extent in response to an increased flow rate characteristic there-through (see column 2, lines 6-18 and column 3, lines 33-45).

Rejection of Claim 19 has been withdrawn.

Arguments directed to claim 19 concerning flap-like elements being adjustable and increased passage opening by an increased flow rate of medium flowing through the openings are persuasive. It is acknowledged that neither Alabaster or other prior art of record discloses, teaches or suggest such flap-like elements.

(10) Response to Argument

It is argued that Alabaster does not disclose filter openings being screened or covered by elements whose state relative to the filter openings vary under the influence of the heat of medium flowing through the openings. Such feature is stated to provide self-cleaning of the instant filter. Appellant conjectures that baffle 24 of Alabaster which flexes when heated, which in sharp contrast, varies the size of the opening of inlet throat area 10 of wire frames 3,4 and 5, which is upstream of the filter openings, instead of varying the size of the filter openings of mesh material themselves. Appellant explains in detail that throat area 10 is not a filter opening. Appellant states that the Office Action appealed alleges that the throat area corresponds with the claimed filter openings.

It is firstly submitted that instant claim 8 does not require the filter openings themselves to change state or position or surface area, and merely requires elements screening or covering, i.e. in the line of flow relative to the filter openings, to have a varying state or to flex in response to changes in temperature or heating. Language of claim 14 is also broad enough to read on effective passage cross section formed by combination of the openings of the filter element itself in combination with proximity of adjacent baffle element(s) proximate or in the line of flow to/from the filter openings.

Additionally, the instant claims, especially claim 8, do not require the element(s) that is covering the filter element to change(s) state or flexes to have any particular filtering function, in itself.

Alternatively or additionally, it is also submitted that baffle 24 of Alabaster flexes against the top, throat portion, of openings of mesh filter material 9, not against wire frames 3 and 4 or 5 in the upstream throat inlet opening. Actually, wire frame 5 is a separate structure that is at the bottom of the filter mesh bag (column 3, line 38 & figure 2). Figures 2, 5 and 6, taken together as a whole, and text of column 3, lines 46-49 indicate that filter mesh material, and filter openings are spaced away from vertical side wall 2 of the dishwasher washing chamber, "except at the top of the pouch". Such "top of the pouch" is understood to be above the level at which baffle or baffles 24 flex in and out of contact with the filter openings of mesh material 9. The "top of the pouch" is understood to be proximate wire frame structure 3 and 4. Figures 2,5 and 6, supported by text of column 3, line 74-column 4, line 3 and column 4, lines 36-40 illustrate flow of liquid being filtered having both outward and downward vectors/components of flow, with such flow passing through the entire length of the side of the filter bag facing the dishwasher chamber wall 2 , including the portion of filter mesh bag contacted by baffle(s) 24.

It is further argued that the throat area 10, in which the baffle 24 acts, does not filter the medium at all; column 3, lines 54-73 explaining that medium may flow back through the throat area and not be filtered. Appellant urges that Alabaster narrows the throat area such that the foam does not escape filtering by forcing it through the openings in the mesh material 9. It is also submitted that such "forcing…" indeed does cause filtration of the particles entrained in foam portion of the liquid being filtered as well as the main body of liquid itself.

Further, with respect to claim 14, it is argued that baffle elements 12 do not flex or change state with respect to degree of heat. Relatedly, appellant points out that no filtering is accomplished by openings between the baffle elements 12 and openings of the filter mesh material. It is acknowledged that baffle elements 12, themselves do not flex. Possible use of baffle elements 12 are discussed in the Office Action appealed, largely to support the finding of obviousness to providing a plurality of heat-flexing baffles 14 instead of just one heat-flexing baffle.

Arguments directed to claim 19 are moot in view of withdrawal of the rejection of this claim.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Joseph Drodge

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